

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 1956 OF 2015

Mr. Dilip Madhukar Sheth.

... Petitioner.

V/s.

Borivali Education Society and Ors.

... Respondents.

Mr. Sunil Dighe for the Petitioner.

Mr. Himanshu Kode for Respondents 1 and 2.

Ms. Gauri Rao, AGP for the Respondents 4 and 5.

CORAM : N.M. JAMDAR, J.

DATE : 11 SEPTEMBER, 2015.

P.C. :-

Rule. Rule made returnable forthwith. The Respondents waive service. By consent taken up for final disposal.

2. The Petitioner – teacher challenges the order passed by the School Tribunal, Mumbai dated 12 January 2015 holding that the Petitioner is not entitled for reinstatement although the School Tribunal came to the conclusion that the termination of the Petitioner was not legal.

3 The impugned direction by the School Tribunal arose in following circumstances. The Petitioner filed an Appeal No.16 of 2014 in School Tribunal, Mumbai challenging her oral termination with effect from 1 September 2012. According to the Petitioner she was appointed pursuant to an advertisement dated 22 October 2010 given the interview and was appointed as a Shikshan Sevak on permanent basis. It is stated that the Respondent No.1 – Management is a minority institution. According to the Petitioner, her services were excellent and there was no cause of complaint. She met the Education Officer who told the Respondent No.1 – Management to take her back on a vacant post. Since the Petitioner was not taken back in service, she filed an Appeal before the School Tribunal. The School Tribunal after considering the facts on record came to the conclusion that the services of the Petitioner were without any blame. The Petitioner was appointed pursuant to an advertisement. The proposal of the Petitioner was rejected by the Education Officer and the Education Officer had sent two surplus teachers which had to be absorbed and therefore, there was no vacancy. The School Tribunal rendered a categorical finding that the termination of the Petitioner was not falling under Section 5(3) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, however, declined to grant relief to the Petitioner on the ground that since surplus teachers sent by the Education Officer have been absorbed in the school, the Petitioner cannot be accommodated. This order is impugned in

the present Petition by the Petitioner. The declaration that the Petitioner's termination was not legal, has not been challenged and therefore, the scope of this Petition is restricted to the refusal by the School Tribunal to grant reinstatement to the Petitioner on the ground that there are surplus teachers.

4 The School Tribunal has not considered the circumstances in which said surplus teachers were absorbed in the school. The School Tribunal has also not considered the various decisions of the Court and also relevant Resolutions issued by the State Government. The School Tribunal has not attempted to find out whether appropriate directions can be issued to reinstate the Petitioner by exploring various modalities. The legal position as to whether a direction can be issued to a minority institution under Rule 25(a) of Maharashtra Employees of Private Schools Rules, 1981 has also not been considered by the School Tribunal. The learned Counsel for the Petitioner has pointed out that as much as six surplus teachers have been sent to one school i.e. of the Respondent No.1 causing serious difficulties in the functioning of Respondent No.1.

5. The learned Counsel for Respondent No.1 has asserted that such surplus teachers were unilaterally sent by the Education Officer without consulting the Respondent No.1 – Management. The manner in which the Education Officer has proceeded to send the surplus teachers and the manner in which the right of the

Petitioner is defeated, as if the absorption of such surplus teachers is a fate accompli to conclude the right of the Petitioner, needs investigation of various facets.

6. A detailed adjudication of the factual position and the conduct of the education department is required, on the part of the School Tribunal, if the School Tribunal is to decline to relief of reinstatement to the Petitioner only on this ground. The Learned Counsel for the Petitioner has also urged that the teachers who have been directed to be absorbed in Respondent No.1 – Management can always be accommodated in some other school and only on the ground of their absorption, the right of the Petitioner cannot be defeated. But for issuing such directions, the concerned teachers will have to be given an opportunity too.

7. In the circumstances, the appropriate course of action, which the learned Counsel for the parties agree, is to remand the proceedings back to the School Tribunal, Mumbai. It is however made clear that the remand shall be only in respect of the relief of reinstatement to the Petitioner and not regarding her entitlement to grant of relief of reinstatement. It is open to the Petitioner to join the concerned teachers as party Respondents.

8. In the circumstances, the impugned order dated 12 January 2015, so far as it holds that the Petitioner is not entitled to reinstatement, is quashed and set aside and the Appeal is restored

to the file of the School Tribunal, Mumbai only for the purpose of consideration of relief of reinstatement prayed by the Petitioner. The contentions of parties as regard this relief are kept open. Accordingly, Clauses 3,4 and 5 of the impugned order are quashed and set aside.

9. Considering the fact that there is a finding in favour of the Petitioner regarding legality of her termination and the only question is of reinstatement, the School Tribunal will give priority to the disposal of the Appeal and decide and dispose off the same within five months from today.

10 Rule made absolute in above terms. No order as to costs.

(N.M. JAMDAR, J.)

C E R T I F I C A T E

Certified to be true and correct copy
of the original signed Order.